

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)**

GERARD MORRISON, et al.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:14cv5
vs.	)	
	)	Judge Hilton
COUNTY OF FAIRFAX, VA.,	)	Magistrate Judge Anderson
	)	
Defendants.	)	
	)	
	)	

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**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF  
DEFENDANT'S LIABILITY FOR ITS FAILURE TO PAY FAIR LABOR STANDARDS  
ACT OVERTIME PAY TO ITS FIRE CAPTAINS**

In accordance with the Court's June 26, 2014 Order, (Docket Entry 103), Federal Rules of Civil Procedure, Rule 56, and for the reasons set forth in the accompanying memorandum, plaintiffs move for partial summary judgment on the issue of the defendant's liability for its failure to pay Fair Labor Standards Act ("FLSA") overtime pay to the plaintiff Fire Captains.

The 176 fire fighter plaintiffs are employed at the rank of Captain for Fairfax County. They regularly work in excess of the FLSA statutory maximum without earning FLSA overtime pay for their overtime work. The FLSA requires overtime compensation to be paid at the rate of one and one-half times the employee's regular rate of pay to all employees who are covered by its provisions and who work in excess of the maximum hours threshold.

The undisputed facts show that plaintiffs are not exempt from the FLSA and are entitled to overtime compensation. Multiple courts and the Department of Labor ("DOL") have held that first-line public safety supervisors who engage in fire fighting and emergency response, like the Captains here, must be paid FLSA overtime. In 2004, the DOL enacted a regulation specifically

directed at fire department supervisors to clarify that such employees do not qualify for the administrative or executive exemptions to the FLSA– the exemptions claimed by the County in this case to unlawfully deny the Captains overtime pay. 29 C.F.R. §541.3. The DOL's interpretation that such front line public safety supervisors are entitled to FLSA overtime has been upheld by two appellate courts. *Mullins v. City of New York*, 653 F.3d 104 (2d Cir. 2011); *Maestas v. Day & Zimmerman, LLC*, 664 F.3d 822, 829 (10th Cir. 2012).

The Captains' primary job duty is to respond to fire and emergency calls side by side with the fire fighters on their crew (who are FLSA non-exempt), and to direct the work of their crews on the fire ground. As such, in accordance with the DOL regulation that specifically applies to them, the plaintiffs are covered by the FLSA, and the County's failure to pay them FLSA overtime pay is unlawful. *See* 29 C.F.R. §541.3 ("The Section 13(a)(1) exemptions do not apply to ... fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and other similar employees, ***regardless of rank or pay level***, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; ... or other similar work.") (emphasis added). Accordingly, plaintiffs are entitled to summary judgment as a matter of law.

As set forth in detail in the accompanying memorandum in support of plaintiffs' motion, plaintiffs respectfully request that the Court grant summary judgment in their favor on the issue of defendant's liability for its failure to pay the plaintiff Captains FLSA overtime pay.

Dated: August 8, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of August, 2014, I electronically filed the foregoing motion, accompanying memorandum and appendix using the CM/ECF system, which will send a notification of such filing to all counsel of record, including defendant's counsel:

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